

# DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## POLICIES AND PROCEDURES

*Subject:*  
**ACCOUNTING OF DISCLOSURES OF  
PROTECTED HEALTH  
INFORMATION**

Effective Date:  
7/1/04

Policy Number:  
HIPAA 04-8

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Entity responsible:  
Office of  
Legal Counsel

### 1. **Purpose:**

This policy provides instruction and guidance on how to provide an accounting of disclosures of protected health information (PHI) as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, other relevant Federal laws, and the Tennessee Code Annotated.

### 2. **Definitions:**

- 2.1 **Health Oversight Agency:** An agency or authority of the State or United States, or a person or entity acting under a grant of authority of the State or United States that is authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. (45 CFR §164.501)
- 2.2 **Legal Representative:** The conservator of the service recipient; attorney in fact under a power of attorney who has the right to make disclosures under the power; parent, guardian or legal custodian of a minor child; guardian *ad litem* for the purposes of the litigation in which the guardian *ad litem* serves; treatment review committee for a service recipient who has been involuntarily committed; executor or administrator of an estate; temporary caregiver under Tenn. Code Ann. §34-6-302; or guardian as defined in the Uniform Veteran's Guardianship Law at Tenn. Code Ann. §34-5-102.
- 2.3 **Limited Data Set:** PHI that excludes the following direct identifiers for the individual or relatives, employers, or household members of the individual: names; postal address information other than town or city, state and zip code; telephone numbers; fax numbers; electronic mail addresses; social security numbers; medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; Web Universal Resource Locators (URLs); Internet Protocol (IP) address numbers; biometric identifiers, including finger and voice prints; full face photographic images and any comparable images. (45 CFR §164.514(e)(2))

- 2.4 Protected Health Information (PHI): Individually identifiable health information [IIHI] which is information that is a subset of health information, including demographic information collected from an individual, and created or received by a health care provider; and relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual; and that is transmitted or maintained in electronic media, or any other form or medium. Specifically excluded from this definition is IIHI contained in education records covered by the Family Educational Rights and Privacy Act (20 USC §1232g) and IIHI contained in employment records held by a covered entity in its role as employer. (45 CFR §160.103)
- 2.5 Service Recipient: A person who is receiving service, has applied for service, or for whom someone has applied for or proposed service because the person has a mental illness, serious emotional disturbance, or a developmental disability.

### 3. Policy:

- 3.1 Right to Accounting of PHI Disclosures; Exceptions. A service recipient has a right to receive an accounting of disclosures of PHI made by the Department of Mental Health and Developmental Disabilities (DMHDD) or the Regional Mental Health Institute (RMHI) in the six (6) years prior to the date on which the accounting is requested. The service recipient may request, in writing, an accounting of disclosures for a period of time less than six (6) years, but no more than six (6) years prior to the date of the request. The DMHDD/RMHI is not required to provide an accounting for disclosures that occurred prior to the HIPAA compliance date of April 14, 2003. The DMHDD/RMHI must provide a written accounting of disclosures of PHI made during the period for which the accounting was requested, except for disclosures:
- 3.1.1 To carry out treatment, payment, and health care operations;
  - 3.1.2 To the individual the protected health care information is about;
  - 3.1.3 Pursuant to a valid authorization given by the service recipient, parent(s) of a minor child, or legal representative as defined in Subsection 2.2 of this Policy, to release the service recipient's PHI to another individual or entity;
  - 3.1.4 For the facility's directory, or to any person involved in the service recipient's care;
  - 3.1.5 For national security or intelligence purposes;
  - 3.1.6 To correctional institutions or law enforcement officials as provided in 45 CFR §164.512(k)(5) (i.e., law enforcement official having custody of an inmate or responsibility to transport inmates).
  - 3.1.7 As part of a limited data set, as defined in Subsection 2.3 of this Policy; or

3.1.8 That occurred prior to the HIPAA compliance date of April 14, 2003.

3.2 Provision of Accounting; When Must Act; Extension of Time; Fees

3.2.1 The DMHDD/RMHI must act on the request for an accounting within sixty (60) days of the written request.

3.2.2 If the DMHDD/RMHI is unable to provide the accounting within the sixty (60) days, there may be an extension for a maximum of thirty (30) days provided that: (1) the service recipient is given a written statement of the reason(s) for the delay, and (2) the service recipient is given a date of not more than thirty (30) days later in time when the accounting will be provided.

3.2.3 The DMHDD/RMHI must provide the first accounting, in any twelve (12) month period, to a service recipient without charge. The DMHDD/RMHI may impose a reasonable fee for each subsequent request for an accounting within the same twelve (12) month period provided that: (1) the service recipient or legal representative is informed of the fee in advance, and (2) the service recipient has the opportunity to modify or withdraw the request in order to reduce or avoid the fee.

3.3 Temporary Suspension of Right for Certain Disclosures

3.3.1 If a health oversight agency as defined in Subsection 2.1 of this Policy, or law enforcement official, provides a written statement indicating that an accounting of disclosures that contains disclosures made to them is reasonably likely to impede their activities, the DMHDD/RMHI must temporarily suspend the service recipient's right to an accounting of these disclosures for the time specified in the written statement from the health oversight agency or law enforcement official. The service recipient may be given an accounting of disclosures made to others within the guidelines covered in Section 3.1 of this Policy. At the conclusion of the temporary suspension, the service recipient should be given an accounting of disclosures to a health oversight agency or law enforcement official if the service recipient had been given an accounting that did not include these disclosures due to the temporary suspension.

3.4 Content of Accounting. The DMHDD/RMHI must provide a written accounting of disclosures of PHI, except as provided in Section 3.1 of this Policy, which occurred during the six (6) year period, or shorter time period if requested, prior to the date of the request for an accounting. The accounting must also include disclosures to or by business associates of the DMHDD/RMHI. For each permissible disclosure, the accounting must include the following information:

3.4.1 The date of the disclosure;

3.4.2 The name of the entity or person who received the PHI and, if known, the address of such entity or person;

- 3.4.3 A brief description of the PHI disclosed; and
- 3.4.4 A brief statement of the purpose of the disclosure that reasonably informs the service recipient of the basis for the disclosure.
- 3.5 Disclosure Log; Documentation of Accounting; Retention.
  - 3.5.1 All disclosures of PHI must be recorded on a disclosure log kept in the service recipient's medical record. The disclosure log must contain:
    - 3.5.1.1 The date of the disclosure;
    - 3.5.1.2 The name of the entity or person who received the PHI and, if known, the address of such entity or person;
    - 3.5.1.3 A brief description of the PHI disclosed; and
    - 3.5.1.4 A brief statement of the purpose of the disclosure that reasonably informs the service recipient of the basis for the disclosure.
  - 3.5.2 A copy of the written accounting must also be placed in the service recipient's medical record.
  - 3.5.3 All accountings prepared and given to the service recipient must also be recorded in the disclosure log kept in the service recipient's medical record.
  - 3.5.4 Written accountings are to be retained for six (6) years from the date of creation.

#### **4. Procedure/Responsibility:**

- 4.1 When request is received. When a DMHDD/RMHI employee receives a written request from a service recipient, or legal representative as defined in Subsection 2.2 of this Policy, for an accounting of disclosures of PHI, the employee must forward the request to the Privacy Officer/designee. If a verbal request is received, the employee must inform the individual that State law requires the request to be in writing and submitted to the Privacy Officer/designee.
- 4.2 If service recipient needs assistance with written request. If the service recipient requires assistance in completing a written request, the DMHDD/RMHI shall provide assistance. The written request must then be delivered to the Privacy Officer/designee.
- 4.3 Acting on the request. The Privacy Officer/designee must, to the extent possible, provide the service recipient with an accounting within sixty (60) days after receiving the request. If unable to provide an accounting within that time period, there may be one extension of a maximum of thirty (30) days. The service recipient, or legal representative as defined in Subsection 2.2 of this Policy, must be notified, in writing,

of the extension within the sixty (60) day time period; must state the reason(s) for the delay, and give a date of not more than thirty (30) days later in time when the accounting will be provided. A copy of the accounting request and the DMHDD/RMHI response must be placed in the service recipient's medical record.

- 4.4 When temporary suspension is needed – verbal notification. If the DMHDD/RMHI is notified verbally by a health oversight agency as defined in Subsection 2.1 of this Policy, or law enforcement official, that making an accounting to the service recipient, or legal representative as defined in Subsection 2.2 of this Policy, would impede their activities, the right to an accounting of these disclosures must be suspended for thirty (30) days from the date of the verbal request, unless the health oversight agency or law enforcement official subsequently provides written notice for a longer period. The Privacy Officer/designee must document the verbal request for suspension, including the identity of the health oversight agency or law enforcement official making the statement, place the documentation in the service recipient's medical record, advise the service recipient of the request for temporary suspension, and that the service recipient's right to an accounting of these disclosures will be suspended for thirty (30) days, or longer if the health oversight agency or law enforcement official subsequently provided written notice for a longer period, from the date of the notification. The service recipient may be given an accounting of disclosures made to others within the guidelines covered in Section 3.1 of this Policy. At the conclusion of the temporary suspension, the service recipient should be given an accounting of disclosures to a health oversight agency or law enforcement official if the service recipient had been given an accounting that did not include these disclosures due to the temporary suspension.
- 4.5 When temporary suspension is needed – written notification. If the DMHDD/RMHI is notified in writing by a health oversight agency as defined in Subsection 2.1 of this Policy, or law enforcement official, that making an accounting to the service recipient, or legal representative as defined in Subsection 2.2 of this Policy, would impede their activities, the right to an accounting of these disclosures must be temporarily suspended for the period of time stated in the written notification. This type of suspension is limited to the time stated in the notification, but is not subject to other time limitations. The written notification must be filed in the service recipient's medical record, and the service recipient must be notified that the right to an accounting of these disclosures has been suspended for the period of time stated in the written notification. The service recipient may be given an accounting of disclosures made to others within the guidelines covered in Section 3.1 of this Policy. At the conclusion of the temporary suspension, the service recipient should be given an accounting of disclosures to a health oversight agency or law enforcement official if the service recipient had been given an accounting that did not include these disclosures due to the temporary suspension.
- 4.6 Fees. The DMHDD/RMHI must provide the first accounting, in any twelve (12) month period, to a service recipient without charge. The DMHDD/RMHI may impose a reasonable fee for each subsequent request for an accounting within the same twelve (12) month period provided that: (1) the service recipient, or legal representative as defined in Subsection 2.2 of this Policy, is informed of the fee in

advance, and (2) the service recipient or legal representative has the opportunity to modify or withdraw the request in order to reduce or avoid the fee.

- 4.7 Creating the accounting report. The DMHDD/RMHI must provide a written accounting of disclosures of PHI, except as provided in Section 3.1 of this Policy, which occurred during the six (6) year period, or shorter time period if requested, prior to the date of the request for an accounting. The accounting must also include disclosures to or by business associates of the DMHDD/RMHI. The DMHDD/RMHI is not required to provide an accounting for disclosures that occurred prior to the HIPAA compliance date of April 14, 2003. The accounting report must be in writing and a copy placed in the service recipient's medical record. The accounting report must contain the following:

- 4.7.1 The date of the disclosure;
- 4.7.2 The name of the entity or person who received the PHI and, if known, the address of such entity or person;
- 4.7.3 A brief description of the PHI disclosed; and
- 4.7.4 A brief statement of the purpose of the disclosure that reasonably informs the service recipient of the basis for the disclosure.

- 4.8 Documenting all disclosures and the accounting report.

- 4.8.1 The Privacy Officer/designee who discloses PHI must document all disclosures on a disclosure log kept in the service recipient's medical record. A copy of the written request for disclosure must also be placed in the service recipient's medical record. Disclosures of PHI may also be entered into an easily searchable electronic log. The disclosure log must include:
  - 4.8.1.1 The date of the disclosure;
  - 4.8.1.2 The name of the entity or person who received the PHI and, if known, the address of such entity or person;
  - 4.8.1.3 A brief description of the PHI disclosed; and
  - 4.8.1.4 A brief statement of the purpose of the disclosure that reasonably informs the service recipient of the basis for the disclosure.
- 4.8.2 All accountings prepared and given to the service recipient must also be recorded in the disclosure log kept in the service recipient's medical record.
- 4.8.3 A copy of the written accounting must also be placed in the service recipient's medical record.

4.8.4 Written accountings are to be retained for six (6) years from the date of creation.

**5. Other Considerations:**

**Authority:**

Health Information Portability and Accountability Act of 1996, HIPAA Regulations 45 CFR §160.103, 45 CFR §164.501, 45 C.F.R. §164.512(k)(5), 45 CFR §164.514(e)(2), 45 C.F.R. §164.528 and 45 CFR §164.530(j); Confidentiality of Alcohol and Drug Abuse Patient Records as regulated in 42 CFR Part 2; Tenn. Code Ann. §§ 33-1-303 and 33-3-104; Tenn. Code Ann. §34-5-102; and Tenn. Code Ann. §34-6-302.

Approved:

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Commissioner

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Date